



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2020-0458]

RIN 1625-AA00

### Safety Zone; Apra Outer Harbor, Naval Base Guam

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is establishing a recurring safety zone for certain waters of Apra Outer Harbor. This action is necessary to provide for the safety of life on these navigable waters near Apra Harbor, Guam, during fireworks displays. This rulemaking prohibits persons and vessels from entering the safety zone unless authorized by the Captain of the Port Guam (COTP) or a designated representative.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0458 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Chief Petty Officer Robert Davis, Sector Guam, U.S. Coast Guard; telephone 671-355-4866, email [wwmgum@uscg.mil](mailto:wwmgum@uscg.mil).

### SUPPLEMENTARY INFORMATION:

#### I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking

## **II. Background Information and Regulatory History**

Navy Morale, Welfare, and Recreation conducts a recurring fireworks display between 6 p.m. and 9 p.m. during the first week of July. The fireworks are launched from a barge positioned in Apra Outer Harbor. Hazards from firework display include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. In response, on March 24, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Apra Outer Harbor, Naval Base Guam (86 FR 15625). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended April 23, 2021 we received no comments.

## **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP Guam has determined that potential hazards associated with the fireworks to be used during displays are a safety concern for anyone within a 190-yard radius of the barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

## **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published March 24, 2021. There is one change in the regulatory text of this rule from the proposed rule in the NPRM. The text now refers to the event as Independence Day instead of 4<sup>th</sup> of July.

This rule establishes a recurring safety zone from 6 p.m. to 9 p.m. during the first week of July. The safety zone will cover all navigable waters within 190 yards of the fireworks barge located in Apra Outer Harbor. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 6 p.m. to 9 p.m. fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will impact a small designated area of the Apra Outer Harbor for three hours. The safety zone will impact a small section of the main channel for Navy traffic, however Navy traffic will be able to transit around the area safely. This is also the main traffic area for the Marianas Yacht Club in Sasa Bay, however vessels will be able to transit around the area safely. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 00 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant

economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction, and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately three hours that would prohibit entry within 190 yards of a fireworks barge. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION**

**CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 00170.1., Revision No. 01.2

2. In numerical order under the undesignated center heading “Fourteenth Coast Guard District,” add § 165.1419 to read as follows:

**§ 165.1419 Safety Zone; Apra Outer Harbor, Naval Base Guam.**

(a) *Location.* The following areas, within the Captain of the Port Guam (COTP) Zone (See 33 CFR 3.70-15), all navigable waters on the surface and below the surface within 190 yards of the fireworks barge for Independence Day celebrations at Polaris Point, Naval Base Guam. The barge will be anchored approximately 500 yards off the north tip of Polaris Point in Apra Outer Harbor.

(b) *Definition.* As used in this section, “designated on-scene representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, and a Federal, State, and local officer either designated by or assisting the COTP Sector Guam in the enforcement of the safety zone.

(c) *Regulations.* (1) In accordance with the general regulations in section §165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated on-scene representative.

- (2) This safety zone is closed to all persons and vessel traffic, except as may be

permitted by the COTP or a designated on-scene representative.

(3) Persons and Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated on-scene representative to obtain permission to do so. The COTP or a designated on-scene representative may be contacted via VHF Channel 16 or at telephone number (671) 355-4821. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated on-scene representative.

(d) *Enforcement period.* This safety zone will be enforced on a specific date during the first week of July from 6 p.m. to 9 p.m. annually, unless the event is delayed or cancelled due to weather. The Coast Guard will provide advance notice of enforcement and a broadcast notice to mariners to inform public of specific date during the first week in July.

**Dated:** May 1, 2022.

NICHOLAS R. SIMMONS,  
Captain, U.S. Coast Guard,  
Captain of the Port, Guam  
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